Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2000

RAY CRAIN AND CREDIT MANAGEMENT CONSULTING COMPANY,
Petitioner,

v.

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE FOR THE SUPREME COURT OF TEXAS,
Respondent.

Petition for a Writ of Certiorari to the First Court of Appeals, Houston, Texas and the Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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4900

FIRST QUESTION PRESENTED FOR REVIEW

Whether the state courts in Texas exceed their powers in substantially changing statutory law in reaching this conclusion and ignoring statutory changes directly affecting the issues before the Court.

SECOND QUESTION PRESENTED FOR REVIEW

Does an injunction prohibiting a person from contracting with persons to perform services authorized by the Federal Fair Debt Collection Practice Act and the Texas Fair Debt Collection Practice Act violate ones due process and constitutionally protected rights of freedom of speech and of Discrimination against Petitioner.

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Petitioner respectfully request that a writ of certiorari issue to the Court of Appeals for the First Appellate District of Texas at Houston, Texas, to permit this Honorable court to review the decision and judgment of RAY CRAIN AND CREDIT MANAGING CONSULTING COMPANY v. THE UNAUTHORIZED PRACTICE OF THE LAW COMMITTEE FOR THE SUPREME COURT OF TEXAS, Cause Number 01-980101CV, appealed from the 61st District Court of Harris County, Texas Trial Cause NO. 1995-058840.

DECISION BELOW

Petitioner was sued by THE UNAUTHORIZED PRACTICE OF THE LAW COMMITTEE FOR THE SUPREME COURT OF TEXAS alleging Plaintiff's debt collection practice violated the Unlawful Practice of Law statutes of Texas.

A Summary Judgment was granted against Plaintiff enjoining him from activities in his debt collection business that he has conducted for 28 years.

The First Court of Appeals affirmed the decision of the 61st District Court of Harris County, Texas. Petition for Review was filed with the Supreme Court of Texas with review being denied.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. Sec. 1257(a) providing jurisdiction of review "final judgments... rendered by the highest Court of a State in which a decision could be had... by writ of certiorari, when any title, right, privilege, or immunity is specifically set up or claimed under the Constitution... of the United States."

The First Court of Appeals of Texas entered its order on December 23, 1999 and denied rehearing on March 6, 2000.

The Texas Supreme Court denied Rehearing on November 16, 2000.

Petitioner's U.S. Constitutional Fourteenth Due Process rights were violated when the trial court failed to admonish him on the full range of punishment.

This petition is timely filed, by placing it in the United States mail before February 14, 2001.

CONSTITUTIONAL PROVISIONS AT ISSUE

The constitutional provisions that form the basis for Petitioner contentions are:

U.S. Constitution Amendment I -

Congress shall make no law... abridging freedom of speech...

U.S. Constitution Amendment XIV.

Nor shall any state deprive any person of life, liberty, of property, without due process or equal protection of the law.....

PERTINENT TEXAS LAW

TEX. GOVT CODE SEC 81.101

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or

similar products if the products clearly and conspicuously state that the products are not a substitute for the advise of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

TEX. GOVT CODE SEC 83.001

(a) A person, other than a person described in Subsection (b), may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.

TEX. PROPERTY CODE SEC 53.054

(a) "The affidavit must be signed by the person claiming the lien or by ANOTHER PERSON ON THE CLAIMANTS BEHALF."

TEX. GOVT CODE SEC 392.301

(b) Subsection (a) does not prevent a debt collector from:

(2) threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or

(3) exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

CONCISE STATEMENT OF THE CASE

Questions Raised and Rejected in Courts Below

Petitioner claims that he was denied the federal protection of the United States Constitution due process of law and equal protection by the Court extending the meaning of the state statutes and discriminatory against Plaintiff for operating an independent business as an agent of a company as opposed to being an employee of the company.

Facts Material to the Question Presented

The Texas Supreme Court refused to review the decision of the First Court of Appeals.

Petitioner in his initial Brief to the 1st Court of Appeals raised the constitutional issues presented herein.

The Unauthorized Practice of Law Committee of the Supreme Court of Texas ("UPLC") sued Ray Crain and Credit Management Consulting Company (hereafter collectively "Crain") seeking an injunction against their debt collection activities, which the UPLC alleged constituted the unauthorized practice of law. The UPLC prayed for an injunction against Crain's activities, for a declaratory judgment that the acts complained of constituted the unauthorized practice of law, for an accounting of all monies and profits earned by Mr. Crain and forfeiture of the gross sum of his earnings to the UPLC, and for its costs and reasonable attorneys' fees. The UPLC obtained temporary and permanent injunctions against Mr. Crain, and, thereafter, abandoned its remaining claims.

The Honorable John Donovan of the 61st Judicial District, Harris County, Texas, granted summary judgment to the UPLC and signed the Order Granting Permanent Injunction from which

this appeal is taken. Judge Donovan dismissed all remaining claims and counterclaims in the case.

The parties in the First Court of Appeals consisted of Ray Crain and Credit Management Consulting Company, *Defendants/Appellants*, and the UPLC and Jeff Lehmann, *Plaintiffs/Appellees*. Chief Justice Schneider, Justice Andell, and retired Justice Duggan participated in the decision in the Court of Appeals, which is published at 11 S.W.3d 328 (Tex. App. – Houston [First Dist.], December 23, 1999). Chief Justice Schneider authored the only opinion issued by the Court. The Court of Appeals affirmed the judgment of the Trial Court.

STATEMENT OF FACTS

The Court of Appeals ignored Plaintiff's constitutional rights by affirming the judgment of the Trial Court that violated Plaintiff's Constitutional rights.

A. UNDERLYING FACTS.

Mr. Crain is a bonded debt collector. He has been in the debt collection business in Texas for approximately 28 years. Mr. Crain has never held himself out to be an attorney and makes clear to his customers that he is not an attorney.

Mr. Crain handles only liquidated claims. He never estimates the value of the claims he collects, nor does he negotiate the value of claims with his customers' debtors. Mr. Crain always obtains prior approval from his customer before accepting less than face value for a claim. Mr. Crain does not interpret title insurance policies; he does not even see the debtors' title insurance policies.

A significant part of Crain's business involves mechanic's liens. In the course of collecting his customers' debts, based upon his own factual investigation, Mr. Crain often fills out the factual portions of a standard lien affidavit form drafted by an attorney. Mr. Crain executes these lien affidavits as the authorized agent of his clients and files them with the real property records of the county where the property is located. Mr. Crain does not prepare affidavits for others to sign. Mr. Crain also sends debt collection notices and copies of the lien affidavits to the property owners and to any applicable contractors.

B. PROCEDURAL BACKGROUND.

The UPLC sued Crain on or about December 4, 1995. On February 15, 1996, the Honorable Shearn Smith held a lengthy temporary injunction hearing in which he heard the testimony of three witnesses, including Mr. Crain, and admitted 42 documents into evidence. After considering all of the evidence presented at the hearing, Judge Smith, on March 22, 1996, signed an order granting temporary injunction. In that Order, Judge Smith found that sending notice or demand letters falls within the scope of Crain's allowable actions as debt collectors. He further found "Putting into the letters sent to property owners that civil lawsuits may be filed if the debt is not paid is not unlawful, nor is the mere mentioning of the Texas Property Code." The Order DENIED the requested relief to enjoin Crain from filing and signing lien affidavits, but did enjoin Crain from preparing and filing releases of liens.

On Aug. 28, 1998, without hearing any additional evidence beyond that submitted at the temporary injunction hearing, Judge Donovan entered a Permanent Injunction that far exceeded the scope of the Temporary Injunction entered by Judge Smith. The Permanent Injunction found that preparing and sending lien affidavits and collection notices constituted the

unauthorized practice of law and enjoined Crain from taking such actions. The injunction broadly enjoined Crain "from counseling customers and clients as to legal rights and procedures in handling, perfecting, or collecting money claimed to be owed by the use of demand letters which mention or threaten the potential use of the Texas Property Code and liens to be affixed to land, by the preparation of lien affidavits and claims, for any person or entity other than solely themselves." It also enjoined Crain from supplying or providing to third parties form lien affidavits or claims, or otherwise providing advice to third parties regarding their completion or filing, even though § 392.001(6) of the Texas Finance Code includes in the definition of debt collector "a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts."

REASONS FOR GRANTING REVIEW OF QUESTION ONE

FIRST QUESTION PRESENTED FOR REVIEW

WHETHER THE STATE COURTS IN TEXAS EXCEED THEIR POWERS IN SUBSTANTIALLY CHANGING STATUTORY LAW IN REACHING THIS CONCLUSION AND IGNORING STATUTORY CHANGES DIRECTLY AFFECTING THE ISSUES BEFORE THE COURT.

In this case, the 1st Court of Appeals flatly refused to follow the statutes of Texas as stated above and rewrote the law. The litany of items listed in Govt Code 83.001 clearly is a list of legal documents that on their face and without judicial oversight of process convey real property. Affidavits claiming liens are not listed and an affidavit is merely a sworn statement of facts compiled by a finder of the facts that may be filed in the county records giving notice of an unpaid claim to any interested party. The Unlawful Practice of Law Committee and the Courts have

stretched the statutes to include affidavits because they think that since the claim may put a cloud on the title that is enough to AFFECT TITLE as contemplated by the Legislature.

Petitioners are debt collectors and as such are AGENT of their clients. Agents have the same powers as their masters and in Texas are specifically allowed to protect the statutory and contractual rights of their clients in Finance Code 392. This statute has been completely overlooked and undone.

Texas Property Code 53.054 allows the affidavits to be done by the claimant or by ANOTHER PERSON ON THE CLAIMANT'S BEHALF. The Court of Appeals in their opinion under (9) state that, "This property code provision is inapplicable because it pertains only to those instances where the affiant no longer owns the claim because it was assigned to someone else." That is not the definition of the statute that states, "...ON THE CLAIMANT'S BEHALF." An assignee does not operate on the claimants behalf, but on his own. An AGENT acts on the claimants behalf, as does petitioners.

Even if the preparation and filing of an affidavit signed by petitioner, based on his own factual research was indeed the practice of law, the only powers that the Unlawful Practice of Law Committee and the Court have is to enjoin petitioners from preparing and filing affidavits for third parties. The injunction signed by the District and upheld by the Appellant Courts goes far beyond the inherent powers of the Unlawful Practice of Law Committee.

Under this injunction petitioners and even lawyers they may hire, are prohibited from writing letters of demand on debts that happen to have lien rights, from collecting debts that involve lien rights, from even using the work lien in vocabulary when given the fiduciary powers by their clients to enforce a debt and the statutory and contractual rights that go with it.

This injunction even prohibits petitioners from selling forms even thought the Government Code now specifically authorizes just that.

It is requested that the Honorable Court grant review on this issue and hold that the injunction issued is unconstitutional.

REASONS FOR GRANTING REVIEW OF QUESTION TWO

SECOND QUESTION PRESENTED FOR REVIEW

DOES AN INJUNCTION PROHIBITING A PERSON FROM CONTRACTING WITH PERSONS TO PERFORM SERVICES AUTHORIZED BY THE FEDERAL FAIR DEBT COLLECTION PRACTICE ACT AND THE TEXAS FAIR DEBT COLLECTION PRACTICE ACT VIOLATE ONES DUE PROCESS AND CONSTITUTIONALLY PROTECTED RIGHTS OF FREEDOM OF SPEECH AND DISCRIMINATION AGAINST PETITIONER.

This Court relied on the principals that Petitioner was violating the General Statutes of the Government Code as the substantive law. There is no substantive law with certainty that the Court could recite that was violated, but rather the Court expanded the meaning and interpretation of the statutes relied upon by the Unauthorized Practice of Law Committee and ignore the specific statutes asserted by Petitioner. Where there is a conflict between the general and specific statute the specific statute rules. ***Wood v. Barnes, 420 S.W.2d 425, (Tex. Civ. App.—Dallas 1967, ref n.r.e.)***

Petitioner is a debt collector as defined by the Finance Code § 392.001, Petitioner is therefore authorized to act as an agent of his client, thus performing any act the client could do for himself. If the credit manager, comptroller, or even president of

a corporation prepares and files Affidavits claiming liens, he does so as agent for the corporation. If a sole proprietor has a bookkeeper prepare Affidavit's, she does so as agent. Petitioners are authorized agents, neither the president, bookkeeper, or CMCC can represent the client in court without an attorney, but are authorized to take all necessary steps to protect statutory rights, including threatening to file lawsuits.

The Permanent Injunction of the trial court prohibits Petitioner from these acts which is a total abuse of discretion and contrary to specific statutes authorizing Petitioner to act as a debt collector violating Petitioner's right to due process and discriminate against Petitioner. The provision of the Permanent Injunction at pg #3 enjoining Petitioner from consulting with clients, using demand letters and mechanic's liens to collect alleged debts even if the liens are filed by other persons and the Permanent Injunction at pg. #4, Paragraph 4, enjoining lien notices and negotiation to collect debts, is not only an abuse of discretion but is unconstitutional under both the state and Federal Constitution as an illegal restraint of trade. This injunction prohibits petitioner from writing letter or discussing debts with debtors just because the debt may have lienrights, a clear violation of Freedom of Speech. Further, the Permanent Injunction at Page 5 enjoining Petitioner from supplying or providing legal forms to third parties is clearly an abuse of discretion and discrimination. The Government Code § 81.101 provides:

> (c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state the products are not a

> substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

To enjoin one from an act specifically authorized by a statute is clearly without justification

Quite simply there are no acts of the Petitioner which can show a violation of a substantive law to warrant an injunction the scope of which the Court issued and to find such required a fact finding process by the Trial Court that was conducted without due process. The injunction imposed upon Petitioner is so overly oppressive Petitioner is prohibited from the mere sending of a letter to collect a debt, yet if Petitioner were an employee of a company seeking to collect the debt, he would be allowed to do the acts he is enjoined from. To create such a standard is nothing more than discrimination.

It is requested that the Honorable Court grant review on the issue and remand this case to the 1st Court of Appeals to dissolve the injunction.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully pray that the Court grant his petition and issue a writ of certiorari to the 1st Court of Appeals to declare the injunction unconstitutional.

Respectfully submitted,

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APPENDIX A

NO. 95 - 58840

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE FOR THE SUPREME COURT OF TEXAS	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
VS.	§	
RAY CRAIN, MICHAEL AND CREDIT MANAGEMENT CONSULTING COMPANY	§	234TH JUDICIAL DISTRICT

ORDER GRANTING TEMPORARY INJUNCTION

The application of the Unauthorized Practice of Law Committee (Committee), Plaintiff in this cause, for a Temporary and Permanent injunction came for hearing this day, due notice having been given.

In considering the evidence received and the argument of counsel, the Court finds and concludes that plaintiff will probably prevail on the trial of this cause; that Ray Crain, Michael R. Davis, and Credit Management Consulting Company (CMS), Defendants, intend to continue to give advice as to matters of law to the general public, all causing detriment and irreparable harm for which there is no adequate remedy at law to the citizens of the State of Texas.

The Court finds as follows:

1. Ray Crain is not a licensed attorney in the State of Texas.

2. Ray Crain and CMS are Debt Collectors within the meaning of Art. 5069-11.01 of the Texas Debt Collector Act.

3. That Ray Crain prepares, either personally or by persons under his direct control or employment, lien affidavits for the members of the public to be filed in the public records of Harris County, Texas.

4. That Ray Crain prepares letters to property owners, representing himself as the president of the Defendant CMS, giving legal advice in such communications, and interpreting home owners insurance policy provisions as part of his services to his clients.

5. That Ray Crain receives compensation in the form of contingency fees for all or part of his services.

6. That Ray Crain prepares and files in the public records releases of liens for compensation.

7. That Ray Crain and CMS select and send or file notice letter forms, lien affidavit forms, and release of lien forms for their customers.

8. That Ray Crain and CMS do not fall within the exceptions of §83.001(b) of the Texas Government Code.

Art. 5069-11.01 (c) of the Texas Debt Collection Act defines a "Debt Collector" as "any person engaging directly or indirectly in debt collection...and includes any person who sells, or offers to sell, *forms represented to be a collection system, device, or scheme intended or calculated to be used to collect debts.*" (Emphasis added) The court finds that sending notice or demand letters falls within the scope of CMS and Ray Crain's allowable actions as debt collectors. However, the defendants are still bound by law as to what they are allowed to put in these letters. The "practice of law" includes "the giving of advice or the rendering of any service requiring the use of legal skill or knowledge...." Tex. Gov. Code § 83.001. To the extent that the demand or collection letters sent to property owners gives legal advice, interprets the law or interprets provisions of homeowners insurance policies, Crain and CMS are engaging in the unlawful practice of law. Article 5069-11.02 of the Texas Debt Collectors Act provides in part that "nothing herein shall prevent a debt collector from threatening to institute civil lawsuits or other judicial proceeding to collect a debt..." Putting into the letter sent to property owners that civil lawsuits may be filed if the debt is not paid is not unlawful, nor is the mere mentioning of the Texas Property Code.

IT IS THEREFORE ORDERED that Ray Crain and CMS, thair agents, executors, assigns, successors or employees are hereby commanded to desist and refrain from offering any legal advice or interpreting the law or contractual provisions for any third party. They are enjoined from offering any legal advice, preparing any legal documents, and from counseling third parties as to legal rights. In pursuing their calling as debt collectors, the above named defendants are enjoined from engaging in any practice constituting the practice of law, as defined by § 81.101, et seq. Tex. Gov. Code, either directly or indirect. Any letters sent in an attempt to collect money for their clients are to comply with federal and state Fair Debt Collection Practices Acts.

IT IS FURTHER ORDERED THAT the requested relief to enjoin Ray Crain and CMS from filing and signing lien affidavits is DENIED.

As to CMS and Ray Crain preparing and filing releases of liens, the law is quite clear. An unauthorized practice of law includes charging or receiving any form of compensation for all or any part of the preparation of a legal instrument affecting title toreal property, including a deed, deed of trust, note , mortgage, and transfer or *release of lien.* (Emphasis added).) § 83.001 Tex. Gov. Code. Preparing the releases is an unauthorized practice of law on the part of the defendants. In addition, preparing and filing releases of liens is not within the scope of allowed activity as debt collectors as defined in Art. 5069-11.01 of the Texas Debt Collectors Act.

IT IS THEREFORE FURTHER ORDERED THAT Defendants Ray Crain and CMS, their agents, executors, assigns, successors or employees are hereby commanded to desist and refrain from engaging in the practice of preparing or filing for direct or indirect compensation any releases of liens.

IT IS THEREFORE FURTHER ORDERED THAT Defendants Ray Crain and CMS, their agents, executors, assigns, successors or employees are hereby enjoined until final judgment is rendered in this cause from accepting compensation, directly or indirectly, for any of the actions forbidden by this injunction and from advertising that they can provide the actions forbidden herein.

The court finds that Plaintiff is exempt, under the law, from filing a bond as otherwise required by law and therefore no bond shall be required.

Signed this 22 day of March, 1996.

/s/ Smith
JUDGE PRESIDING

NO. 95-058840

THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE FOR THE SUPREME COURT OF TEXAS	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
VS.	§	
RAY CRANE, MICHAEL R. DAVIS AND CREDIT MANAGEMENT CONSULTING COMPANY	§	61 st JUDICIAL DISTRICT

ORDER GRANTING PERMANENT INJUNCTION

On this day came on to be heard the Plaintiff Unauthorized Practice of Law Committee's Motion for Summary Judgment seeking a Permanent Injunction against Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY.

In considering the Motion, the summary judgment evidence, and the argument of counsel, the Court finds and concludes that the Motion should be granted;

The Court finds generally that the Defendant RAY CRAIN is currently advising and representing "clients" in the representation that he able to prepare, and does prepare, liens and other letters and documents which affect and/or create Liens and/or encumbrances concerning real property to collect money for material suppliers for the construction of improvements to real property. (All references in this ORDER to the Defendant "Ray Crain" refer to Raymond Kenneth Crain, with a TDL# 07838022, SS# 259-84-5146, who resides at 8414 Moss Hang Court, Houston, Texas 77040, acting in his individual capacity

and as the agent, officer and representative of the Defendant CREDIT MANAGEMENT CONSULTING COMPANY.)
The Court finds further as follows:

3. RAY CRAIN is not a licensed attorney in the State of Texas;
4. That RAY CRAIN prepares, either personally or by person under his direct control or employment, "Lien Affidavits and Claims" for member of the public to be filed in the public records of Harris County, Texas, and that such "Lien Affidavits and Claims" are legal instruments affecting title to real property.
5. That RAY CRAIN prepares letters to property owners, representing himself as the president of the Defendant CREDIT MANAGEMENT CONSULTING COMPANY, giving legal advice in such communications, interpreting home owner insurance policy provisions, in furtherance of the perfection of the legal rights of his "clients" and as an integral part of the illegal and unauthorized practice of law involved in the debt collection business of RAY CRAIN.
6. That RAY CRAIN charges and receives compensation in the form of contingence fees for all or part of the preparation of legal instruments affecting title to real property.
7. That RAY CRAIN prepares and files in the public records "releases of lines" for compensation and that such instruments are legal instruments affecting title to real property.
8. That the above activities of RAY CRAIN amount to the illegal and unauthorized practice of law as defined by §§81.101(a) and (b), 83.001, Tex. Gov. Code;
9. That the Defendant RAY CRAIN has utilized stationary with the letterhead of MICHAEL R.

DAVIS, a person who is an attorney licensed by the Supreme Court of Texas, as a part of the process of collecting money for clients within the process of RAY CRAIN's preparation of legal instruments affecting title to real property.

10. That the Defendant RAY CRAIN , by prearrangement with MICHAEL R. DAVIS has been permitted to decide when such letters will be sent, with such letters being never seen by MICHAEL R. DAVIS and with the Defendant RAY CRAIN, or persons in his employ and control, signing the name of the Defendant MICHAEL R. DAVIS.
11. That the post office box 40966, Houston, Texas 77240 is a post office box used by the Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY.
12. That the legal stationary of MICHAEL R. DAVIS used by the Defendant RAY CRAIN states that the licensed attorney, MICHAEL R. DAVIS, is at the post office box 40966.
13. That the Defendant RAY CRAIN has engaged in the process of giving the appearance to the recipients of the legal stationary letters (which are prepared by and sent by the Defendant RAY CRAIN) that at CREDIT MANAGEMENT CONSULTING COMPANY there is a licensed attorney at law engaged and on the premises of the Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY.
14. That the procedure of RAY CRAIN's use of the stationary of the MICHAEL R. DAVIS is designed to be confusing to the consuming public and that same is a deceptive trade practice;
15. That the Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY

select notice letter forms and their contents as well as lien affidavit forms and release of lien forms for their customers and that such process is the unauthorized practice of law.

Unless Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY are deterred from carrying out their intentions and practices, Plaintiff will be without any adequate remedy at law in that the harm to plaintiff and to the public it is sworn to protect is incapable of being precisely ascertained and is unpredictable and unending.

IT IS THEREFORE ORDERED that the Defendants, RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY their agents, executors, attorneys, assigns, successors or employees and anyone acting in the concert with the, or either of them herein, should be and he is hereby commanded forthwith to desist and refrain from offering any legal services or representation to any "clients," from interpreting any legal documents, from counseling customers and clients as to legal rights and procedures in handling, perfecting, or collecting money claimed to be owed by the use of demand letters which mention or threaten the potential use of the Texas Property Code and liens to be affixed to land, by the preparation of lien affidavits and claims, for any person or entity other than solely themselves. The term "themselves", the last word in the previous sentence, excludes third parties who claim to have or who have claims against builders or home owners to whom such third parties provided goods, supplies or materials for the improvement of real property. "Client" means any person or business solicited or contracted with after this date or the signing of this order.

IT IS FURTHER ORDERED that RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY and their agents, attorneys, servants, employees, assigns, purchasers, predecessors, successors, or any person or entity acting in concert with him (all of them are hereby included within the term "Defendants"), indirectly or directly, are hereby permanently enjoined as follows:

1. Defendants are enjoined from engaging in any practice of law, as defined by § 81.101. *Et seq.* Texas Government Code, or from performing any of the other acts enumerated herein, either directly or indirectly; Defendants, however, are not enjoined from representing themselves in any manner before an administrative body or tribunal of this State, or otherwise performing any legal act which is made for the purpose of protecting or advancing their own personal legal rights in a manner consistent with the laws of this State.

2. Defendants are enjoined from preparing or charging or receiving, directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting real property, including a deed, deed of trust, note, mortgage, transfer of lien, mechanics lien, materialman's lien, release of lien, lien affidavit and claim; Nothing herein shall preclude Defendants from preparing such instruments on their own behalf for their personal use.

3. Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY shall, except on their own behalf, desist INSTANTER the initiation of and the continuation of any ongoing or new lien notices, release of lien preparation, lien affidavit and claim preparation-or filing and negotiations with home owners, licences, potential licences, and, insurance companies;

4. Defendants RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY are further enjoined from:

(a) Advertising that they possess the ability to collect money for claimants by the use of notices

of intention to file liens, liens affidavits, or to charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of any legal instrument affecting title to real property, as defined by §81.101 and §83.001, Tex. Gov. Code;

(a) Filing or preparing any instrument which affects title to real property for any person other than themselves;

(b) Supplying or providing legal forms to third parties including forms for the preparation of a deed, deed of trust, note, mortgage, transfer of lien, mechanic's lien, materialman's lien, release of lien, lien affidavits and/or claims or otherwise providing advice to third parties regarding the completion or filing of such forms or documents;

(c) Accepting money or any other consideration whatsoever for performing any of the services or acts that the Defendant is herein enjoined from doing.

All relief not expressly granted herein is denied.

SIGNED this 28th day of August, 1998.

/s/ illegible
JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Grigg S. Weinberg
GREGG S. WEINBERG
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COURT OF TEXAS

APPENDIX B

11 S.W.3d 328, Crain v. Unauthorized Practice of Law Committee of Supreme Court of Texas, (Tex.App.-Hous.(1 Dist.) 1999) **Page 1**

***328** 11 S.W.3d 328

Ray **CRAIN** and Credit Management Consulting Company, Appellants,
v.
THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF THE SUPREME COURT OF TEXAS and Jeff Lehmann, Appellees.

No. 01-98-01010-CV.
Court of Appeals of Texas,
Houston (1st Dist.).
Dec. 23, 1999
Rehearing Overruled March 6, 2000.

Unauthorized Practice Of Law Committee (ULPC) of Supreme Court brought action against non-attorney and his debt collection business, alleging that they were engaged in unauthorized practice of law. The 61st District Court, Harris County, John Donovan, J., granted summary judgment for Committee and permanently enjoined defendants from engaging in certain activities. Defendants thereafter sued chairman of UPLC subcommittee, asserting that he tortuously interfered with their business in course of UPLC investigation. Following grant of summary judgment for chairman, defendants appealed both summary judgments. The Court of Appeals, Schneider, C.J., held that: (1) defendants' preparation and filing of mechanic's liens or lien affidavits constituted unauthorized practice of law; (2) doctrine of laches did not apply to ULPC's action; and (3)

chairman of ULPC subcommittee was entitled to governmental immunity.

Affirmed.

1. ATTORNEY AND CLIENT 11(13)
45 ----
451 The Office of Attorney
451(A) Admission to Practice
45k11 Practitioners Not Admitted or Not Licensed
45k11(13) Investigations, contempts, and prosecutions.
Tex.App.-Houston [1st Dist.] 1999.

Where activities alleged to be practice of law were undisputed, trial court had authority to decide as matter of law whether such practices constituted unauthorized practice of law. V.T.C.A., Government Code §§ 81.101, 83.001.

2. JUDGMENT 181(16)
228 ----
228V On Motion or Summary Proceeding
228k181 Ground for Summary Judgment
228k 181(15) Particular Cases
228k 181(16) Attorneys, cases involving.
Tex.App.-Houston [1 Dist.] 1999.

The unauthorized practice of law is a proper subject for summary judgment. V.T.C.A., Government Code §§ 81.101, 83.001.

3. APPEAL AND ERROR 1175(1)
30 ----
30XVII Determination and disposition of Cause
30SVII(D) Reversal
30k1175 Rendering Final Judgment
30k1175(1) In general
Tex.App.-Houston [1 Dist.] 1999.

When both sides move for summary judgment and the trial court grants one motion and denies the other, the Court of Appeals reviews the summary judgment evidence presented by both sides and determines all questions presented. Vernon's Ann. Texas Rules Civ. Proc., Rule 166a(c).

4. APPEAL AND ERROR 954(1)
30 ----
30XVI Review
30XVI(H) Discretion of Lower Court
30k950 Provisional Remedies
30k954 Injunction
30k954(1) In general.

[See headnote text below]

4. INJUNCTION 1
212 —
2121 Nature and Grounds in General
212(A) Nature and Form of Remedy
212k1 Nature and purpose in general.
Tex.App.-Houston [1 Dist.] 1999.

The grant of a permanent injunction is ordinarily within the trial court's sound discretion, and on appeal, review of the trial court's action is limited to whether the action constituted a clear abuse of discretion.

5. INJUNCTION 102
212 ----
212II Subjects of Protection and Relief
212II(H) Matters Relating to Criminal Acts
212k102 Criminal acts in general
Tex.App.-Houston [1 Dist.] 1999

Where the facts conclusively show a party is violating the substantive law, the trial court should enjoin the violation, and in such case, there is no discretion to be exercised.

6. ATTORNEY AND CLIENT 11(1)
45 ----
45I The Office of Attorney
451(A) Admission to Practice
45k11 Practitioners Not Admitted or Not Licensed
45k11(1) In general.
Tex.App.-Houston [1 Dist.] 1999.
The statutory definition of the practice of law is not exclusive; rather, courts inherently have the power to determine whether other services and acts not enumerated in the definition may constitute the practice of law. V.T.C.A., Government Code §§ 81.101(a).

7. ATTORNEY AND CLIENT 14
45 ----
45I The Office of Attorney
45I(B) Privileges, Disabilities, and Liabilities
45k14 Nature and term of office.
Tex.App.-Houston [1 Dist.] 1999.
The "practice of law"embraces, in general, all advice to clients and all action taken for them in matters connected with the law. V.T.C.A., Government Code §§ 81.101(a).

See publication Words and Phrases for other judicial constructions and definitions.

8. ATTORNEY AND CLIENT 11(3)
45 ----
45I The Office of Attorney
45I(A) Admission of Practice
45k11 Practitioners Not Admitted or Not Licensed
45k11(2) Acts Constituting Practice of Law in General
45k11(3) Drafting or preparation of documents.
Tex.App.-Houston [1 Dist.] 1999.

Preparation and filing of mechanic's liens or lien affidavits by non-attorney and his debt collection business constituted "unauthorized practice of law"; in preparing those documents, business impliedly advised its clients of their legal rights and entitlement under the law, business also prepared and sent letters to property owners interpreting home owner insurance policy provisions and advising them to make claim against their title insurance policy in furtherance of perfection of legal rights of its clients, it do so in order to procure settlements with insurance companies in exchange for release of liens, and settling claims secured individual's legal rights with respect to such claims. And involved use of legal skill and knowledge. V.T.C.A., Government Code §§ 81.101, 83.001.

See publications Words and Phrases for other judicial constructions and drfinitions.

9. ATTORNEY AND CLIENT 11(3)
45 ----
45I The Office of Attorney
45I(A) Admission to Practice
45k11 Practitioners Not Admitted or Not Licensed
45k11(2) Acts Constituting Practice of Law in General
45k11(3) Drafting or preparation of documents.

Tex.App.-Houston [1 Dist.] 1999.

Statute providing that lien affidavit must be signed by person claiming lien or by another person on claimant's behalf did not permit non-attorney and his debt collection business to engage in unauthorized practice of law by preparing and filing mechanic's liens or lien affidavits; that statute pertained only to those instances where affiant no longer owned claim because it was assigned to someone else.

V.T.C.A., Government Code §§ 81.101(a); V.T.C.A., Property Code § 53.054.

10. ATTORNEY AND CLIENT 11(13)
45 ----
45I The Office of Attorney
45I(A) Admission to Practice
45k11 Practitioners Not Admitted or Not Licensed
45k11(13) Investigations, contemps, and prosecutions.
Tex.App.-Houston [1 Dist.] 1999.

Doctrine of laches did not bar Unauthorized Practice Of Law Committee's (ULPC) action against non-attorney and his debt collection business for engaging in unauthorized practice of law, even though UPLC did not bring suit after conducting different investigation of defendants several years earlier; because UPLC was performing governmental function when it brought suit against defendants, laches was inapplicable.

11. EQUITY *328 85
150 ----
150II Laches and Stale Demands
150k85 Rights of public.
Tx.App.-Houston [1 Dist.] 1999.

Laches is not imputable to a government entity while the entity is performing a governmental function.

12. JUDGMENT 185.3(2)
228 -----
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185.3 Evidence and Affidavits in Particular Cases
228k185.3(2) Particular defenses.
Tex.App.-Houston [1 Dist.] 1999.

A properly pleaded affirmative defense, supported by uncontroverted summary judgment evidence, may serve as the basis for a summary judgment.

13. JUDGMENT 185(5)
228 ----

228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(5) Weight and sufficiency.
Tex.App.-Houston [1 Dist.] 1999.

When a defendant moves for summary judgment on its affirmative defenses, it must conclusively prove all the essential elements of its defenses as a matter of law, leaving no issues of material fact.

14. TORTS 16
379 ----
379k16 Defenses in general.
Tex.App.-Houston [1 Dist.] 1999.

At common law, the absolute immunity of parties and witnessess from subsequent liability for their testimony in judicial proceedings is well established.

15. TORTS 16
379 -----
379k16 Defenses in general.
Tex.App.-Houston [1 Dist.] 1999.

Any communication, even perjured testimony, made in the course of a judicial proceeding, cannot serve as a basis for a suit in tort, as the proper administration of justice requires full and free disclosure from witnesses unhampered by fear of retaliatory lawsuits.

16. TORTS 16
379 ----
379k16 Defenses in general
Tex.App.-Houston [1 Dist.] 1999.

Judicial communication privilege applied to claim for tortious interference with business relations.

17. TORTS 16
379 ----

379k16 Defenses in general
Tex.App.-Houston [1 Dist.] 1999.

The judicial communication privilege is not limited to claims of libel or slander, and it should be applied to claims arising out of communications made in the course of judicial proceedings, regardless of the label placed on the claim.

18. TORTS 16
379 ---
379k16 Defenses in general.
Tex.App.-Houston {1 Dist.] 1999.

Chairman of Unauthorized Practice of Law Committee (ULPC) subcommittee was entitled to governmental immunity with respect to claim that he tortuously interfered with non-attorney's business relations when chairman sent letters to clients of non-attorney and his debt collection business, informing them that enforcement proceedings and investigation had begun, and asking for any information to assist in investigation; chairman sent letters in course and scope of his duty to seek elimination of unauthorized practice of law.
V.T.C.A., Government Code § 81.106.

19. TORTS 10(3)
379 ---
379k10 Interference with Employment or Occupation, or Injury to Business
379k10(3) Particular types of interference in general.
Tex.App.-Houston [1 Dist.] 1999.

Because non-attorney and his debt collection business were engaged in unauthorized practice of law, they had no claim against chairman of Unauthorized Practice Of Law Committee (ULPC) subcommittee for tortious intrerference with their business relations, even if chairman sent letters to business's clients soliciting them to retain his services as attorney for collection of unpaid debts.

*330 Chuck Portz, Portz & Portz, Houston, for Appellants.

Robert Higgason, Law Office of Robert W. Higgason, Houston, for Appellees.

Panel consists of Chief Justice SCHNEIDER and Justices ANDELL and DUGGAN. (FN*).

*331 OPINION

MICHAEL H. SCHNEIDER, Chief Justice.

Applicants, Ray Crain and Credit Management Consulting Company (CMCC), appeal summary judgments rendered in favor of appellees, the Unauthorized Practice of Law Committee of the Supreme Court of Texas (UPLC) and Jeff Lehmann. The summary judgment rendered in favor of UPLC enjoins Crain and CMCC from engaging in the unauthorized practice of law. By eight points of error, Crain and CMCC challenge: (1) whether the determination that an activity constitutes the unauthorized practice of law is a question of law; (2), (3), (4) whether the preparation and filing of lien affidavits and mechanic's liens constitutes the unauthorized practice of law; (5) whether laches bars the suit brought by the UPLC; (6) whether the summary judgment based on immunity granted in favor of Lehman was proper; and (7) whether the trial court's order exceeded the motions. We affirm.

Facts and Procedural History

This case revolves around the debt collection practices of Crain (who is not an attorney) and his business, CMCC. CMCC business practices are undisputed. CMCC collects debts related to the construction industry, as well as medical and business debts. A substantial part of CMCC's business involves the

preparation, signing and filing of lien affidavits on behalf of laborers, so that mechanic's and materialmen's liens against real property can be perfected and fixed. Crain also prepares and personally signs notice letters on behalf of, and as an agent of, CMCC's clients. Crain then transmits the notices and affidavits to the parties and files or causes to be filed the affidavits in the real property records in the appropriate county. Prior to the temporary injunction entered in this case, Crain also prepared and filed releases of liens in the real property records.

As protection for the public, the Supreme Court of Texas appoints the nine members of the UPLC to investigate and prosecute persons who practice law without authorization. *Drew v. Unauthorized Practice of Law Comm.*, 970 S.W.2d 152, 153 (Tex.App.–Austin 1998, pet. denied). In 1983, the UPLC conducted an investigation of Crain's and CMCC's business practices. No action was taken against Crain or CMCC as a result of this investigation.

However, in 1995. the UPLC investigated Crain and CMCC, determined they were engaged in the unauthorized practice of lae, and filed suit to enjoin Crain and CMCC from continuing such practices. The district court granted summary judgment in favor of the UPLC permanently enjoining Crain and CMCC from: (1) engaging in any practice constituting the practice of law; (2) preparing, charging, or receiving any compensation for the preparation of legal instruments affecting real property, including a mechanic's lien, materialman's lien, release of lien, or lien affidavit and claim; (3) the continuation of any ongoing or new lien notices, release of lien preparation, lien affidavit and claim preparation or filing, and negotiations with hom owners, lienees, potential lienees, and insurance companies; (4) advertising they possess the ability to collect money for claimants by the use of notices of intention to file liens or lien affidavits, or to charge or receive compensation for the preparation of any legal instrument which affects title to real property for any person other than themselves; (6) supplying legal forms to third parties, icluding forms for the preparation of

a mechanic's lien, materialman's lien, release of lien, or lien affidavits, and/or providing advice to third parties regarding completion or filing of such forms or documents; and (7) accepting money or consideration for performing any of the services or acts that Crain or CMCC was enjoined from doing.

CMCC brought suit against Jeffrey Lehmann, the chairman of the Houston subcommittee of the UPLC, asserting he *332 tortiously interfered with CMCC's business in the course of the UPLC investigation. The court also granted a summary judgment for Lehmann based on immunity. CMCC appeals both summary judgments. The trial court stayed a portion of the injunction pending this Court's review.

Is the Determination of Whether CMCC's Acts Constitute the Unauthorized Practice of Law a Question of Law?

[1] In its first point of error, CMCC contends the trial court erred in granting summary judgment in favor of the UPLC because it is a question of fact whether the preparation and filing of a mechanic's lien constitutes the unauthorized practice of law. We disagree

[2] The unauthorized practice of law is a proper subject for summary judgment. *Unauthorized Practice of Law Comm. V. Cortex*, 692 S.W.2d 47, 51 (Tex.1985) (holding it was for court to decide whether activities of private immigration service agency amounted to practicing law); *Fadia v. Unauthorized Practice of Law Comm.*, 830 S.W.2d 162, 164 (Tex.App.–Dallas 1992, writ denied) (holding trial court had authority to decide as matter of law whether Fadia's distribution of will manuals constituted unauthorized practice of law). When the activities alleged to be the practice of law are undisputed, courts have the inherent power to determine on a case-by-case basis whether those activities constitute the unauthorized practice of law. *Cortez*, 692 S.W.2d at 50-51; *Fadia*, 830 S.W.2d at 164. The

trial court, therefore, had the authority to decide as a matter of law whether CMCC's practices constitute the unauthorized practice of law.

Whether the Preparation and Filing of Lien Affidavits and Mechanic's Liens Constitutes the Unauthorized Practice of Law?

Standards of Review

Summary Judgment

[3] The summary judgment rule provides a method of summarily ending a case that involves only a question of law and no fact issues. TEX.R.CIV.P. 166a(c); *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548 (Tex. 1985); *Cigna Ins. Co. v. Rubalcada*, 960 S.W.2d 408, 411 (Tex.App.–Houston [1st Dist.] 1998, no pet.).

When, as here, both sides move for summary judgment and the trial court grants one motion and denies the other, we review the summary judgment evidence presented by both sides and determine all questions presented. *Commissioners Ct. of Titus Cty. V. Agan* 940 S.W.2d 77, 81 (Tex. 1997); *Rubalcada*, 960 S.W.2d at 411-12. We render such judgment as the trial court should have rendered. *Agan*, 940 S.W.2d at 81; *Rubalcada*, 960 S.W.2d at 411-12.

Permanent Injunction

[4] [5] The grant of a permanent injunction is ordinaryly within the trial court's sound discretion, and on appeal, review of the trial court's action is limited to whether the action constituted a clear abuse of discretion. *Morris v. Collins*, 881 S.W.2d 138, 140-41 (Tex.App.-Houston [1 Dist.] 1994, writ denied). Where the facts conclusively show a party is violating the substantive law, the trial court should enjoin the violation, and in such case,

there is no discretion to be exercised. *Green v. Unauthorized Practice of Law Comm.*, 883 S.W.2d 293, 296 (Tex.App.–Dallas 1994, no writ).

Discussion

We examine points of error two, three, and four together because of the interdependence among them. CMCC contends the trial court erred in granting the UPLC's motion for summary judgment because its business practices do not constitute the unauthorized practice of law. We disagree.

Section 81.101 of the Government Code defines the practice of law as:

***333** [T]he preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the *giving of advice* or the *rendering of any service requiring the use of legal skill or knowledge, such as preparing* a will, contract, or other *instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.*

TEX. GOV'T CODE ANN. § 81.101(a) (Vernon 1988) (emphasis added).

[6] [7] The statutory definition is not exclusive. TEX. GOV'T CODE ANN. § 81.101(b) (Vernon 1988). Courts inherently have the power to determine whether other services and acts not enumerated in the definition may constitute the practice of law. *Id.; Cortez*, 692 S.W.2d at 50. The practice of law embraces, in general, all advice to clients and all action taken for them in matters connected with the law. *Brown v. Unauthorized Practice of Law Comm.*, 742 S.W.2d 34, 41 (Tex.App.–Dallas 1987, writ denied).

Additionally, the legislature has broadly prohibited certain activities as the unauthorized practice as law. For example,

> (A) A person, other than a person described in Subsection (b) may not charge or receive, either directly or indirectly, any compensation for all or any part of the *preparation of a legal instrument affecting title to real property, including* a deed, deed of trust, note, mortgage, and transfer or *release of lien.*

TEX. GOV'T CODE ANN. § 83.001 (Vernon 1998) (emphasis added).

[8] The question of whether the preparation and filing of mechanic's liens or lien affidavits constitutes the unauthorized practice of law has been considered once in Texas. In 1939, the Beaumont Court of Appeals, in *Stewart Abstract Co. v. Judicial Commission of Jefferson County*, held Stewart Title Guaranty Company was engaged in the practice of law by preparing and executing *mechanic's liens*, notes, transfers, and extensions. 131 S.W.2d 686, 689 (Tex. Civ.App.–Beaumont 1939, no writ) (emphasis added). The court then held the trial court properly enjoined Stewart Title's acts constituting the unlawful practice of law. *Id.* At 690.

Apparently, only one state court of last resort has addressed this issue. In *The Florida Bar v. Carmel*, the Supreme Court of Florida enjoined a nonlawyer from sending letters threatening to file liens and from preparing and filing liens and releases of liens. 287 So.2d 305, 307 (Fla. 1973). The court held the foregoing conduct constitutes the unauthorized practice of law in Florida and issued a permanent injunction restraining respondent from engaging in such acts. *Id.*

The uncontroverted facts in this case reveal CMCC was engaged in the unauthorized practice of law. CMCC prepares

and files lien affidavits and claims and releases of liens, legal instruments affecting title to real property. The preparation of these documents involves the use of legal skill and knowledge. In preparing these documents, CMCC impliedly advises its clients of their legal rights and entitlement under the law. CMCC also prepares and sends letters to property owners interpreting home owner insurance policy provisions and advising them to make a claim against their title insurance policy in furtherance of perfection of the legal rights of its clients. When CMCC sends such letters to home owners, it impliedly advises them that they do in fact have legal rights and should make a claim. CMCC engages in these tactics to procure settlements with insurance companies in exchange for release of liens. Settling claims secures an individual's legal rights with respect to such claims, and involves the use of legal skill and knowledge.

[9] Additionally, we disagree with CMCC's reliance on section 53.054 of the Property Code. Section 53.054 of the Property *334 Code provides that "[t]he affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf..." TEX PROP.CODE ANN. § 53.054 (Vernon 1995), CMCC argues this provision permits anyone to sign a lien affidavit on behalf of a claimant, and as such, it is authorized to prepare, sign, and file mechanic's liens for its clients. This Property Code provision is inapplicable because it pertains only to those instances where the affiant no longer owns the claim because it was assigned to someone else. *Id.*

CMCC also relies on *Trane Co. v. Wortham*, 428 S.W.2d 417 (Tex. Civ.App.–Houston [1st Dist.] 1968. Wrot ref'd n.r.e.). In *Trane*, the *agent of the corporation that furnished the labor and materials* that served as the basis for the lien was permitted to sign the affidavit even though the claim for recovery had been assigned to someone else. *Id.* At 421. Here, CMCC is *not the provider* of the labor and materials it seeks a lien upon, yet it signs affidavits on behalf of those who were. As such, this situation is distinguishable from *Trane*.

Further, CMCC relies on *Hadnot v. Wenco Distributors*, 961 S.W.2d 232 (Tex.App.–Houston [1st Dist.] 1997, no writ) to assert that its filing of mechanic's lien is not prohibited by the unauthorized practice of law statutes. *Hadnot*, however, was not an unauthorized practice of law case and does not lend support to CMCC's position because it does not distinguish mechanic's liens from deeds of trust for purposes of determining the unauthorized practice of law.

Finally, CMCC relies on *Unauthorized Practice of Law Comm. V. Jansen*, 816 S.W.2d 813 (Tex.App.–Houston [14th Dist.] 1991, writ denied), to assert its practices are no different from that of a public insurance adjuster perfecting and negotiation a claim for an insured. *Jansen* is distinguishable, however, because it does not involve the preparation, signing, and filing of documents in the real property records, but only documents filed with an insurance company. *Id.* At 813-14.

Viewing the facts most favorably to CMCC and resolving all doubts in its favor, we conclude CMCC's activities constitutthe unauthorized practice of law. We hold the trial court properly rendered summary judgment permanently enjoining CMCC from continuing such practices.

We overrule points of error two, three, and four.

Laches

[10] In its fifth point of error, CMCC contends the doctrine of laches bars the UPLC's suit because the UPLC did not bring suit after conducting the 1983 investigation. We disagree.

[11] The courts of this state have uniformly held that laches is not imputable to a government entity while the entity is performing a governmental function. *Reyna v. Attorney General of Texas*, 863 S.W.2d 558, 559 (Tex.App.–Fort Worth 1993, no

writ); *Waller v. Sanchez*, 618 S.W.2d 407, 409 (Tex.Civ App.–Corpus Christi 1981, no writ). The rationale behind the inapplicability of the doctrine is to allow governmental entities to enforce statutes intended protect the general public. *Waller*, 618 S.W.2d at 409.

The UPLC is a permanent entity in the State Bar, an administrative agency of the judicial department of government. *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 771-72 (Tex. 1999). Therefore, because the UPLC was performing a governmental function when it brought suit against CMCC for engaging in the unauthorized practice of law, CMCC cannot assert the defense of laches.

We overrule point of error five.

Immunity

Standard of Review

Summary judgment is proper when the movant shows there are no genuine issues of material fact and it is entitled to judgment as a matter of law. TEX.R. CIV.P. ***335** 166a(c); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995); *Lawson v. B Four Corp.*, 888 S.W.2d 31,34 (Tex.App.–Houston [1st Dist.] 1994, writ denied). In reviewing a summary judgment, we must indulge every reasonable inference in favor of the nonmovant and resolve any doubts in its favor. *Randal's Food Mkts.*, 891 S.W.2d at 644, *Lawson*, 888 S.W.2d at 33.

[12] [13] Lehmann moved for summary judgment asserting the affirmative defense of immunity. A properly pleaded affirmative defense, supported by uncontroverted summary judgment evidence, may serve as the basis for a summary judgment. *Roark v. Stallworth Oil & Gas, Inc.*, 813 S.W.2d 492, 494 (Tex. 1991). When a defendant moves for summary judgment on its

affirmative defenses, it must conclusively prove all the essential elements of its defenses as a matter of lse, leaving no issues of material fact. *Montgomery v. Kennedy*, 669 S.W.2d 309, 310-11 (Tex. 1984).

Discussion

In its seventh point of error, CMCC contends the summary judgment based on immunity granted in favor of Lehmann was improper. CMCC's complaint is based on Lehmann's testimony in a case in Brazoria County, and letters sent by Lehmann in the course of the UPLC's investigation of CMCC, as well as letters sent by Lehmann to solicit CMCC customers.

Testimony

[14] [15] At common law, the absolute immunity of parties and witnesses from subsequent liability for their testimony in judicial proceedings is well established. *Briscoe v. LaHue*, 460 U.S. 325, 331-32, 103 S.Ct. 1108, 1113, 75 L.Ed.2d 96 (1983); *Laub v. Pesikoff*, 979 S.W.2d 686 (Tex.App.–Houston [1st Dist.] 1998. [pet. denied). Any communication, even perjured testimony, made in the course of a judicial proceeding, cannot serve as a basis for a suit in tort. *Bird v. W.C.W.*, 868 S.W.2d 767, 771 (Tex. 1994); *Laub*, 979 S.W.2d at 689. The proper administration of justice requires full and free disclosure from witnesses unhampered by fear of retaliatory lawsuits. *Bird*, 868 S.W.2d at 772; *Laub*, 979 S.W.2d at 689.

[16] [17] Appellants rely on *City of Brady v. Bennie*, 735 S.W.2d 275 (Tex.App.–Eastland 1987, no writ), for the proposition that the judicial communication privilege is limited to libel and slander cases, and does not extend to a case where tortious interference is alleged. We disagree. This Court has held that the judicial privilege is not limited to claims of libel or slander, and it should be applied to claims arising out of

communications made in the course of judicial proceedings, regardless of the label placed on the claim. (FNI) *Laub*, 979 S.W.2d at 689. In addition, the Dallas Court of Appeals has held the privilege extends to claims for tortious interference. *Griffin v. Rowden*, 702 S.W.2d 692, 697-95 (Tex. App.–Dallas 1985, writ ref'd n.r.e.) (holding that notice of lis pendens, filed as part of judicial proceeding, is absolutely privileged and cannot form basis for tortious interference claim). As such, we conclude Lehmann's prior testimony in the Brazoria County suit was subject to the affirmative defense of absolute immunity.

Letters Sent to Customers to Inform of Proceedings

[18] CMCC also asserts summary judgment in favor of Lehmann based on immunity was improper based on letters he sent during the course of the UPLC's investigation. We disagree. Lehmann sent letters to CMCC clients informing them that an enforcement proceeding and investigation had begun against CMCC, and specified which of CMCC's activities ***336** may be found to be illegal. Lehmann also asked for copies of any transactions and contacts with Crain and CMCC the customers may have had to aid the investigation.

Section 81.106 of the Government Code provides:

> (a) The unauthorized practice of law committee, any member of the committee, or any person to whom the committee has delegated authority and who is assisting the committee is not liable for any damages for an act or omission in the course of the official duties of the committee.
>
> (b) A complainant or a witness in a proceeding before the committee or before a person to whom the committee has delegated authority and who is assisting the committee has the same immunity that a complainant or witness has in a judicial proceeding.

TEX. GOV'T CODE ANN. § 81,106 (Vernon 1997). Therefore, the statute grants immunity for acts done in the course of official duties of the UPLC. In addition, one of the duties of the UPLC is to "seek the elimination of the unauthorized practice of law by appropriate actions and methods, including the filing of sutis in the name of the committee." TEX. GOV'T CODE ANN. § 81.104 (Vernon 1997).

The letters CMCC complains of were sent by Lehmann in his official capacity as Houston chairman of the UPLC, as part of the UPLC's investigation of CMCC. The letters were written on the UPLC's letterhead, and were signed by Lehmann as chairperson of the committee. The letters merely advised that enforcement proceedings and an investigation had begun, and asked for any information to assist in the investigation. As such, the letters were sent by Lehmann in the course and scope of his duty to seek the elimination of the unauthorized practice of law and are also covered by governmental immunity.

Letters Sent to Customers as Solicitation

[19] CMCC further asserts summary judgment was not properly granted in favor of Lehmann because Lehmann sent letters to CMCC clients soliciting them to retain his services as an attorney for the collection of unpaid debts. We disagree. As CMCC was engaged in the unauthorized practice of law, it has no cause of action as a matter of law for Lehmann's interference, if he interfered at all. Therefore,. summary judgment was properly granted in favor of Lehmann.

We overrule point of error seven.

Did Summary Judgment Exceed the Motions?

In its final point of error, CMCC asserts the summary judgment was improper because it disposed of issues not covered in the

motions, specifically CMCC's counterclaims and other causes of action pleaded by the UPLC. We disagree. The UPLC abandoned its other claims and went forward only under its authority to seek a permanent injunction. Additionally, CMCC's counter-claims against Lehmann were addressed to Lehmann's motion for summary judgment. We overrule the eighth point of error.

We affirm the judgment of the trial court.

FN* The Honorable Lee Duggan, Jr. retired Justice, Court of Appeals, First District of Texas at Houston, participating by assignment.

FM1. This Court was interpreting the supreme court's holding that the privilege must extend beyond defamation actions in order to "avoid the circumvention [of the policy behind the privilege] by affording an almost equally unrestricted action under a different label." *Bird*, 868 S.W.2d at 772

SUPPLE
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ENDIX

Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 2000

RAY CRAIN AND CREDIT
MANAGEMENT CONSULTING COMPANY,
Petitioner,
v.
THE UNAUTHORIZED PRACTICE OF LAW
COMMITTEE FOR THE SUPREME COURT OF TEXAS,
Respondent.

Petition for a Writ of Certiorari to the First Court of Appeals, Houston, Texas and the Texas Supreme Court

SUPPLEMENT APPENDIX PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENT APPENDIX A

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711

August 24, 2000

Mr. Gerald J. Brown
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Houston, TX 77056 - 3000

Mr. Charles H. Portz
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RE: Case Number 00 - 0399
Court of Appeals Number 01 - 98 - 01010 - CV
Trial Court Number 95 - 058840

Style: RAY CRAIN and CREDIT MANAGEMENT CONSULTING COMPANY
v.
THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF THE SUPREME COURT OF TEXAS and JEFF LEHMANN

Dear Counsel:

Today, the Supreme Court of Texas denied the petition for review, as supplemented, in the above styled case.

Sincerely,

John T. Adams, Clerk

by Blanca E. Morin
Blanca E. Morin, Deputy

cc: Ms. Margie Thompson, Clerk
Mr. Charles Bacarisse